

PBS MACNEIL-LEHRER REPORT

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REAGAN: There have been leaks and I am disturbed about many of the leaks, but we're not doing anything that I think unfairly imposes a restriction upon the right of the people to know or the freedom of information.

MACNEIL: Good evening. President Reagan said on Wednesday that during his term as president there had been very serious leaks of classified information that had actually endangered U.S. relations with another country. The president, in remarks to American newspaper publishers in New York, was defending the directive he issued in March to prevent leaks of information by government employees. Critics have called the directive one of the most sweeping secrecy edicts ever issued by the White House. Democratic Sen. Daniel Patrick Moynihan told the same gathering 'the effect of the directive could well be to strike at the heart of the ability of the public to be informed about their government.' Government defenders of the directive say it is overdue and is needed to check a growing threat to national security. Tonight, will the president's secrecy directive protect national security or will it endanger freedom of speech? Jim Lehrer is off. Charlayne Hunter-Gault's in Washington. Charlayne?

HUNTER-GAULT: Robin, President Reagan's stop-the-leaks directive touches a number of different bases. First it requires all government employees with security clearance to sign a secrecy pledge and if requested submit to a lie-detector test. If they refuse, they could face 'adverse consequences, including dismissal.' Until now, only those in the most secret agencies like the CIA were required to take lie-detector tests. The directive also calls for pre-publication clearance. Under it, all employees privy to especially sensitive information will now be required to submit for review and/or censorship any book, articles or speeches they write. The order applies for life, even if the employee leaves government service. The directive expands upon a 1980 Supreme Court ruling against former CIA agent, Frank Snepp. He published a critical book about the agency without first clearing it with the CIA. The Court said the government had the right to pre-screen such material. There is one recommendation pending before the administration aimed at further toughening of the new directive. It proposes making leaking a crime, punishable by three years in prison, and up to a \$10,000 fine. That recommendation, as well as the new secrecy directive, were drafted by the interdepartmental group on unauthorized disclosures of classified information. Its chairman is Deputy Assistant Attorney General Richard Willard. Mr. Willard, what kinds of threats to the national security have prompted your new directive? WILLARD: This is not a new problem. Leaks of classified information have troubled presidents for 10 or 20 years or longer. And it's not necessarily a problem that's become more severe under this administration. It's continued, however, to cause a lack of confidence in our government's ability to keep secret important information that should be kept secret about our national defense.

HUNTER-GAULT: Well, the president said that there were very serious leaks that were threatening the national security of the country. Can you give me, I know that you can't reveal specifically, what those leaks were, but can you give me some ball park kinds of examples that would illustrate what you're talking about? WILLARD: Some of the leaks disclosed our intelligence capabilities. In other words they reveal how our intelligence services obtain information from foreign sources. That not only

compromises the information that's leaked, but it also makes it impossible for us to continue to obtain information in the future from those sources and methods.

HUNTER-GAULT: Sometimes you think, are you suggesting that those names are revealed or the kinds of operations they're involved in, and so on? WILLARD: It could endanger a human agent, or more likely it could make a very expensive technical collection system hard to use in the future to obtain the same kind of information.

HUNTER-GAULT: Going back to what the president said, do you feel that the national security is more threatened now under the Reagan administration than it has been in the past? WILLARD: No, it's not a perception that the problem is worse than it was, the problem has always been very serious. And so far, nothing has effectively been done to stop the problem.

HUNTER-GAULT: Realistically, then, what do you hope to accomplish with this new directive? WILLARD: Well, we're not optimistic enough to think that we'll solve the problem overnight. What we do hope to do is increase our ability to catch people who leak classified information, where appropriate, fire them from their jobs or subject them to other kinds of administrative sanctions. And we hope, over time, to slow down the flow of classified information out of the government and into the public's hands.

HUNTER-GAULT: All right. Why polygraph tests? I mean, there was a leak, I think last week, into the Washington Post from the Defense Department, where one of the people in the department said they are unreliable and that they might incriminate a person who is innocent. WILLARD: Well, we think the polygraph should only be used in unusual cases where the number of suspects has been narrowed down to a small group, and there's no other way to resolve the situation. The polygraph does have its limitations. But we're in a situation where with leaks, they're hard cases to solve. They're consensual transactions. people are not willing to voluntarily...

HUNTER-GAULT: Uhm, um. WILLARD: ...confess if they've leaked classified information.

HUNTER-GAULT: All right. You have this new directive with all of the components I just described. Why is it necessary to make it a federal crime, to impose a sentence and such a stiff fine? WILLARD: It's already a federal crime in most cases to leak classified information. But there's a sort of crazy quilt of statutes that cover this. Some deal with communications intelligence. Some deal with atomic energy information. Some deal with other kinds of specific sorts of leaks. We think it might be useful to have a single statute that will cover the whole problem. But that's not really essential. The most important problem is to try to solve new cases. We think that if people can be fired from their jobs for leaking classified information, that's probably an adequate sanction to deter most of them.

HUNTER-GAULT: All right. Thank you. Robin?

MACNEIL: One of the hotter legal battles over the government's right to screen and censor manuscripts was over the book "The CIA and the Cult of Intelligence", written by a former agent. Floyd Abrams was one of the attorneys who argued the case against the government. Mr. Abrams is a constitutional lawyer and expert on the First Amendment who strongly opposes this presidential directive. Why do you oppose it Mr. Abrams? ABRAMS: I suppose most of all because of the speech that will be lost because of it. The effect of this is as follows. The president gave a speech to a joint session on Wednesday. If people in past administrations wanted to comment on

that, as they have, and if this order had been in effect while they were in power, they couldn't do it without first submitting to the current administration what they wanted to say, so long as they were saying it in writing. We need speech which is fresh and alive. We need it immediately after the administration takes action, any administration.

MACNEIL: You're talking of matters as topical as comment on the presidential speech...ABRAMS: Sure.

MACNEIL: ...that members of.... Why? Because they might have to refer...ABRAMS: Because people will have...

MACNEIL: Because they might have to refer to information that is classified? ABRAMS: Yes. Because you must understand that that the theory of this, is that not just classified information must be submitted in advance to government censors, but classified and unclassified information must be submitted so that the government can tell you what's classified and what's not.

MACNEIL: Because you may not know? ABRAMS: Because you may not know or because you may not choose to abide by it. And so, if this had been in effect during President Nixon, say, Mr. Kissinger would have to make submissions today if he wanted to comment in print tomorrow on what President Reagan said on Wednesday. It seems to me a madly overbroad effort to deal with a rather modest problem.

MACNEIL: The administration says that leaks are a dangerous problem, they're not new, but nobody's been very effective at stopping them and they're a threat to national security. ABRAMS: I think leaks sometimes are a problem. President Kennedy said that our ship of state is the only one that leaks from the top. Most of our leaks are on purpose by government officials acting under the direction of the administration. But there are some which are harmful. I defy anyone to tell us in concrete terms what leaks have genuinely harmed national security. Yet, to hear one, I can imagine one. But we haven't had them. And to lose what this directive chooses to have us lose, the immediacy of speech, speech when it matters most, is a very heavy price to pay.

MACNEIL: Mr. er, uh.... Spokesmen for the administration have said that this will only affect a relatively small number of officials, thousands, who have access to certain kinds of classified information, specifically, information called sensitive compartmented information. ABRAMS: Well, first, I don't think that's the way they drafted it. I think it does affect a whole range of individuals in the government who have access to classified information. But suppose they're right. What they are saying, if they are right, is that the people that know the most, the people that can inform the public the most, after they leave office, may not do so, unless they first submit to the government what they want to say before they say it. There's a word for that in First Amendment terms, that's censorship. The question is whether this administration is right in doing something that no administration in recent years, not Johnson, not Nixon, not Kennedy, not Ford, not Carter, ever chose to do, which is to enact this sweeping sort of revision. A sweeping sort of limitation on the right of former government officials to speak.

MACNEIL: Is this equivalent, or anything equivalent to instituting what the British call Official Secrets Act? ABRAMS: It is not equivalent because it is not a criminal statute. It would get closer if Mr. Willard and his colleagues have their way and we have a more far reaching criminal statute than we have now. The Official Secrets Act of course applies to the press as well. And there's been no proposal yet, from the

administration about the press. But it's similar in a different kind of way. It's similar in that at its core, it is based on a fear of information. A fear, that if too much gets out, the public will suffer. And I think there are some situations in which that is so, but that there are far more in which too little gets out, and the public suffers because of that.

MACNEIL: Well thank you. Charlayne?

HUNTER-GAULT: Following the Supreme Court decision in the Snepp case, the CIA set up its own guidelines for screening manuscripts from current and former agents. They were written by Daniel Silver while he was general counsel to the CIA during the Carter administration. He is now a private attorney here in Washington, and is writing a book on the CIA. Mr. Silver, are you in favor of the president's directive?
SILVER: Yes, I am.

HUNTER-GAULT: Why? SILVER: Because I think the problem of leaking has been a serious one, from administration to administration. It is not only a threat to the national security, but I think it's a threat to the integrity of our constitutional form of government. In effect it is a kind of creeping anarchy within the Executive Branch in which officials violate, in some cases the law, in all cases their oaths of office, because they put their personal views of what is good, what is good for them as individuals, or what is good for the nation above those of the government that they serve.

HUNTER-GAULT: Has it ever been proved that leaks actually harm the national security?
SILVER: It has certainly been proved to the satisfaction of the people within the intelligence community. The disadvantage under which the people within the community labor is that disclosing the extent and nature of the harm, is in itself, harmful. And, for example, I know of cases in which there were newspaper publications about certain technical collection programs of the United States, and within weeks thereafter, the targets of those programs took steps to deny to the United States the intelligence which we were gathering, and those were successful steps. Unfortunately, you have to take my word for that. I can't cite you chapter and verse.

HUNTER-GAULT: Well, you heard Mr. Abrams say that there's been nothing to show that this is really the case. I mean....
SILVER: There probably will be nothing, for that reason. It's a quandary which the defenders of this policy find themselves in.

HUNTER-GAULT: All right. The guidelines that you authored for the CIA could very likely become a model for other agencies under this new directive. Do you think that they are appropriate for other agencies that aren't as highly classified as the CIA?
SILVER: I do indeed.

HUNTER-GAULT: Why? SILVER: Well, the guidelines, perhaps I should describe what the guidelines do. And that is to reduce, as a matter of administration of the CIA Secrecy Agreement, the categories of materials which have to be submitted for pre-publication review. The guidelines provide that a former employee need submit only those materials in which he purports to be conveying intelligence information about either collection techniques or substantive intelligence. In other words, the former employee who wants to wax autobiographical, who wants to trade on inside information, is required to submit his manuscript. The employee who wants to comment on matters of public concern, such as the president's recent speech, without purporting to cite intelligence information, is free to do so without submitting the manuscript for prior review.

HUNTER-GAULT: How effective have your guidelines been in terms of limiting the kinds of leaks that you're concerned about, within the CIA? SILVER: Well, they...

HUNTER-GAULT: They've been in operation for two years now, right? SILVER: The purpose of the guidelines was not to eliminate leaks, as such. That's the purpose of the Secrecy Agreement, which the Supreme Court upheld in the Snepp case. The purpose of the guidelines was to further debate by limiting the burden on it imposed by pre-publication review. And secondarily, to keep the agency from being flooded from unnecessary material which did not require review.

HUNTER-GAULT: Okay, then my ... SILVER: I would say it's been successful in the latter area. And a great deal has been written by former CIA employees, including myself, without submission to the agency for review.

HUNTER-GAULT: Are you gonna submit your book? SILVER: Probably not. My book is a law school case book which takes public cases and discusses the legal issues that they raise. It falls, in my view, clearly outside the policy.

HUNTER-GAULT: But you make that decision, the government doesn't make that decision? SILVER: That's right. I make it at my peril, if I'm incorrect.

HUNTER-GAULT: All right. Thank you. Robin?

MACNEIL: One man who's had firsthand knowledge of government efforts to plug leaks from both sides of the faucet, so to speak, is Hodding Carter. He was Assistant Secretary of State for Public Affairs in the Carter administration and is now back in journalism as the host of Public Television's "Inside Story." Mr. Carter, in a newspaper article recently you called this directive 'the idiocy to top all idiocies.' What did you mean? CARTER: What I mean is that what the situation requires is not that we try to impose more stringent penalties and more classification procedures on an already overloaded system, but that we admit that the problem's precisely because we are too stringent, right now. We're trying too hard, too often to curb what is ridiculous, which is a flow of legitimate information to the public. You cannot stop leaks when the leakers know that most classification is absolutely asinine. And that's what we have today.

MACNEIL: How much classification do you regard as asinine? CARTER: On the basis of what I saw in the position that I held, which is not to pretend that I saw it all or saw even a great bulk of it, but of what I saw, as indeed when I was in the Marines, what I saw when I was an intelligence officer, 90% of everything that's classified can be given to the public with no danger to either national security or anything more than an embarrassment to a bureaucrat or a little political difficulty for an administration.

MACNEIL: Mr. Reagan did say in his speech on Wednesday that his administration is moving to reduce the amount of classification. CARTER: That of course is nonsense. Since the opening days of this administration, since the efforts to tighten up on the Freedom of Information Act, through the executive orders of this president, which extends the force of the classification procedures in ways that make it harder for people to get information and easier for the president to classify, I mean the executive branch to classify, through the orders the president has issued through the White House on access to information by reporters to this later effort. The entire thrust of this administration, for the first time I will say for any administration in 30 years, has been toward less information, not more.

MACNEIL: How do you answer Mr. Silver's concern about what he calls creeping anarchy in the executive branch? You heard what he said. CARTER: I would answer it the same way that the Coolidge Commission spoke to the same question 26 years ago, and almost everybody who has spoken to it, has addressed it since, including Justice Stewart. What you have got to do is first determine what's important to try to save. Pare down what you're trying to save, throw out the chaff, concentrate on the wheat, first thing. Second thing, get at the heart of the problem by instilling discipline at the very top, where the real problem lies. You cannot rule by law, you've got to rule by example when it comes to leaking. And if President Reagan wants to do something about leaking, where he can start is with his immediate staff, and work down.

MACNEIL: Well, thank you. Charlayne?

HUNTER-GAULT: What about that, Mr. Willard? WILLARD: (Inaudible. Both talking simultaneously.)

HUNTER-GAULT: Mr. Abrams made that point, also. WILLARD: Well, he made it a different way. He said that it is very harmful to impose pre-publication review because it went to the people at the top. That's exactly what President Reagan's order does. It attempts to impose discipline on people at the top. It applies, for the first time, to policy-making people at the White House, at the State Department, the same kinds of restrictions that people in the intelligence community have been living with for years. I agree with Mr. Carter, the ship of state does leak from the top.

HUNTER-GAULT: Are you all...? WILLARD: ...And that's what this directive is designed to get at.

HUNTER-GAULT: Are you all in agreement here? CARTER: No, we're not in agreement, and clearly we're in basic disagreement. I don't think, as has been very clearly said, that we're under some kind of critical security problem today. As has been indicated repeatedly, it's no worse now than it has been, and I would just say to all those who raise this problem as a real one, why hasn't this country gone under in security terms in this 20-year period of immense danger to our security? I can honestly tell you that there are more times that our security has been endangered because the government wouldn't level with the people than times that we have had security information put out prematurely or when it should not have been at all.

HUNTER-GAULT: What's your response to that, Mr. Silver? SILVER: I think that's an assertion which is unfounded in any basis and fact, and I will make the opposite assertion. I think we have a serious security problem. I don't think we have to be invaded or have blood running in the streets in order to prove that we do. My experience within two of the major intelligence agencies was that in the three years that I was there, an astonishing number of the most sensitive technical and human collection operations--I'm not talking here about covert action, I'm not talking about concealed substantive intelligence from the public because it was embarrassing to the administration; I'm talking simply about the operational details of collection operations--were leaked or otherwise became revealed to the public, and there were very serious adverse consequences.

HUNTER-GAULT: Mr. Abrams, here's a man from the inside who's saying what you just heard him say. Are you persuaded? ABRAMS: Well, no, not persuaded. I am persuaded by what Mr. Carter says, and I'm willing to add on a little bit of what Mr. Silver has to say. That is to say if we would first get a rational classification system. If we

would start out by significantly narrowing what's classified, then we could turn to the question of how to protect it. If we could....

HUNTER-GAULT: Well, let me.... ABRAMS: Yeah, go on.

HUNTER-GAULT: I just wanted to get Mr. Willard's response to that--that it needs to be narrowed, it's over-broad at this point. WILLARD: The current rules and regulations say that information cannot be classified in order to cover up wrongdoing or prevent embarrassment. It can only be classified if its release could reasonably be expected to cause damage to national security. Now I'm sure that there is a lot of information in the government that has been improperly classified. We will not investigate any leaks of such information.

HUNTER-GAULT: Well, what about.... WILLARD: We will only investigate leaks of information that has been properly classified.

HUNTER-GAULT: Well, what about Mr. Carter's point that 90% of what is classified now could be just completely thrown out because it doesn't threaten anything? WILLARD: The concern we have is not with leaks of information that should not have been classified in the first place. We're concerned about leaks of information that was properly classified and at a very high level. CARTER: That is called the 'trust me' school of classification, which is you trust us not to use this new and rather sweeping edicts to do anything more than we say we're gonna do, and I'm gonna tell you you cannot let classification rest on trust, cause if you do, what you continue to add to is those 100 million pages of classified material extending back 20, 30, 35, 40 years, which this system keeps as classified material because we're supposed to trust people to declassify it. WILLARD: Well, if I can respond, we're not asking people to trust the administration. Declassification can be accomplished through the Freedom of Information Act with a judicial review. The prepublication review system provides for judicial review of those determinations, so that there is a second look by the courts at whether information is being withheld properly because it is classified. If it isn't, the courts can and will overrule it.

HUNTER-GAULT: What about that, Mr. Abrams? ABRAMS: Well, I think where Mr. Willard goes astray is this. It is after all this administration which changed the classification system to abandon the prior requirement that classifiers take into account at least the public's right to know information. It's this administration which has well reversed the prior presumption that if you didn't know whether to classify something at a higher or a lower level, you're supposed to classify it at the lower level. Having done that, having classified more, having made it harder for the public to gain more information, I think, with all respect, it doesn't come with very good grace to tell us that things can be declassified. CARTER: There is one other point on that.

HUNTER-GAULT: Very briefly. CARTER: My only point is simply this. The court procedure is certainly there. The court procedure is also a procedure which takes a long time, a lot of expense and a great deal of effort, which means that for that period it's required to go through that procedure, the government has done what it wants to do, which is to shut up the flow of information.

HUNTER-GAULT: Well, I can't leave two against one. Just a brief response before we move on. WILLARD: Well, if the.... If the information has been improperly classified, the courts can order it released to the public. Sometimes that takes time, I mean, as litigation occurs. If we're talking about information, though,

that's been piled up over 25 or 30 years, then I don't think the judicial review is inappropriate. When the courts need to move fast, they can. I've been in court here in D.C., and I've had TROs entered on one day's notice.

HUNTER-GAULT: Temporary restraining orders? WILLARD: Yes.

HUNTER-GAULT: All right. Robin?

MACNEIL: Mr. Silver, isn't there a distinction between having directives in an agency that is significantly concerned with threats to information gathering, intelligence gathering, which could, if released, have the effects you say and information in other departments which are not anything like as sensitive? SILVER: I think there is a difference, and indeed I'm even willing to conceive that 90% of what Mr. Carter says in the State Department may indeed have been nonsensically classified. The problem is that the intelligence information and sensitive military information, which needs protection, is disseminated throughout a number of departments and agencies of the government so that they can perform their jobs. I think it's important to remember that the most controversial portion of this directive, the prepublication review requirement, applies only to those who have had access to sensitive compartmented intelligence, which is precisely the technical intelligence and very highly classified intelligence produced by the CIA and the National Security Agency and other intelligence agencies, which is not kept hermetically sealed within those agencies but disseminated to the nation's policymakers.

MACNEIL: Well, is that what you're talking about, Mr. Willard--it is only intelligence information on the gathering of intelligence or the fruits of intelligence, either within the agencies that gather it or as it may be disseminated--is it only that you're talking about, in this directive? WILLARD: It's only people who have access to that kind of information who are going to be required to sign prepublication review agreements, and those are only a few thousand, mostly of high-ranking government officials who have access to the very sensitive kinds of intelligence Mr. Silver is talking about. Now there are other provisions of the directive that apply more broadly. All government employees, who have access to classified information, we think have a fiduciary duty to keep it secret and not to disclose it.

MACNEIL: What do you think should be done instead of this, Mr. Abrams? ABRAMS: The first step has got to be deal with the classification system. We can't go on classifying 16 million pieces of information a year, going up geometrically in the millions and the construct onto it a 'let's protect all classified information' approach. We just can't do that. That has got to be the first step. The second step, it seems to me, has got to be a dedication towards getting more information out to the public and not less, and then we can deal, and simultaneously we can deal with trying to prevent leaks and firing people who leak serious information.

MACNEIL: Why do you object to that kind of approach, Mr. Willard? WILLARD: Well, I don't object to the last part of it. Our intention is only to investigate and take action in cases where there have been serious leaks of important and sensitive information that should not have been disclosed. I also agree that we should take steps to cut down on over-classification. There is an information security oversight office, which President Reagan has continued in an existence, which is dedicated to doing that, so I think both goals are important, but I think we can proceed on both fronts at once.

MACNEIL: We have to leave it there. Thank you and Mr. Carter and Mr. Silver for joining us in Washington, Mr. Abrams in New York. Good night, Charlayne.

HUNTER-GAULT: Good night, Robin.

MACNEIL: That's all for tonight. We will be back on Monday night. I'm Robert MacNeil. Good night.